UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Via U.S. Postal Service and Electronic Mail
Certified Mail Receipt No. 7000 0520 0021 6107 8407

November 13, 2009

Aspire Public Schools, a California
non-profit public benefit corporation
1001 22nd Avenue, Suite 100
Oakland, CA 94606
Attention: Mike Barr, CFO

Re: Polychlorinated Biphenys – U.S. EPA Conditional Approval Under 40 C.F.R. § 761.61(a), Toxic Substances Control Act - - *"Toxic Substances Control Act Self-Implementing Cleanup Notification and Certification Former Pacific Electric Motors Facility 1009 66th Avenue in Oakland, California"*

Dear Mr. Barr:

We have reviewed the *"Toxic Substances Control Act Self-Implementing Cleanup Notification and Certification Former Pacific Electric Motors Facility 1009 66th Avenue in Oakland, California,"* letter dated October 23, 2009 and prepared by LFR Inc. an Arcadis Company (LFR) for Aspire Public Schools ("Aspire"). The U.S. Environmental Protection Agency Region 9 (USEPA) is approving Aspire's October 23, 2009 Notification with the conditions established in the attached *"USEPA Conditional Approval for Aspire Public Schools, 1009 66th Avenue, Oakland, CA PCB Self-Implementing On-Site Cleanup and Disposal of PCB Remediation Waste."*

The LFR letter is intended to serve as the notification and certification ("Notification") required in 40 C.F.R. § 761.61(a) of the Toxic Substances Control Act (TSCA) for a self-implementing on-site cleanup and disposal of polychlorinated biphenyls (PCBs) at the Aspire property at 1009 66th Avenue in Oakland. PCBs are present at the Aspire property ("Aspire site") in soils and a potential exists for PCB-containing manufactured products to be present in structures to be demolished at the site. Aspire plans to redevelop the site as a public school for sixth to 12th grade students.

In addition, the Notification requests a "variance" to the schedule provided in 40 C.F.R. § 761.61(a)(3)(ii). USEPA is granting the requested waiver for the schedule in 40 C.F.R. § 761.61(a)(3)(i) in accordance with 40 C.F.R. § 761.61(a)(3)(iii) and in consideration of financial matters that Aspire claims if not resolved could prevent or further delay construction of the school. However, the owner of the property still needs to obtain a similar written waiver from the California Department of Toxic Substances Control (DTSC) and Alameda County Environmental Health (ACEH) in accordance with 40 C.F.R. § 761.61(a)(3)(iii) and maintain all waivers and other records in accordance with 40 C.F.R. § 761.61(a)(9).

While we recognize that, at an October 27, 2009 meeting with Charles Robitaille (Aspire Charter Schools) and LFR representatives (Aspire consultants), Aspire had sought a cleanup standard of 0.39 mg / kg (ppm), we have decided to approve a cleanup standard of 0.13 ppm, as specified in Condition 7 of

the attached approval. This cleanup level is consistent with the levels approved by both ACEH and DTSC as being protective of human health, in that it meets the cleanup goal for PCBs in soils corresponding to a 1 x 10^{-6} risk level. This level is also consistent with the TSCA regulations in 40 C.F.R. § 761.61(a)(4)(v) and 761.61(a)(4)(vi).

We look forward to be of assistance to Aspire during implementation of the subject Notification as modified by the attached USEPA approval. Please call Carmen Santos at (415) 972-3360 if you have any questions concerning this approval.

Sincerely,

Arlene Kabei
Associate Director
Waste Management Division

Enclosure

Cc: Mark Malinowski, DTSC (Chief Schools Unit, Sacramento Office)
Tom Booze, DTSC
Paresh Khatri, Alameda County Environmental Health
Charles Robitaille, Aspire Charter Schools
Alan Gibbs, LFR Inc. an Arcadis Company
Ron Goloubow, LFR Inc. an Arcadis Company
Steve Armann, USEPA R9
Patrick Wilson, USEPA R9
Katherine Baylor, USEPA R9
Carmen Santos, USEPA R9

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USEPA Conditional Approval for Aspire Public Schools, 1009 66th Avenue, Oakland, CA PCB Self-Implementing On-Site Cleanup and Disposal of PCB Remediation Waste

"Toxic Substances Control Act Self-Implementing Cleanup Notification and Certification Former Pacific Electric Motors Facility 1009 66th Avenue in Oakland, California," letter dated October 23, 2009 and prepared by LFR an Arcadis Company (LFR) for Aspire Public Schools ("Aspire").

The U.S. Environmental Protection Agency Region 9 (USEPA) is approving with conditions the Aspire October 23, 2009 Notification and Certification ("Notification"). The Notification is required by 40 C.F.R. § 761.61(a) of the Toxic Substances Control Act (TSCA) for a self-implementing on-site cleanup and disposal of polychlorinated biphenyls (PCBs), 40 C.F.R. § 761.61(a), at the Aspire property at 1009 66th Avenue in Oakland. Aspire must implement the terms of the Notification, as modified by the conditions of approval.

This conditional approval does not relieve the owner of the property from complying with all other applicable federal, state, and local regulations and permits. Departure from the approval conditions without prior written permission from USEPA may result in the commencement of proceedings to revoke this approval, and/or an enforcement action. Nothing in this approval bars USEPA from imposing penalties for violations of this approval or for violations caused by other activities not covered under the terms of this approval that trigger TSCA PCB requirements.

USEPA Conditions of Approval

1. Written, signed certification by owner of Aspire property and party conducting cleanup. The Notification includes an incomplete, unsigned certification. Within two (2) days after the date of this approval, Aspire must submit a revised written, signed Certification including the language under *"Certification"* in 40 C.F.R. § 761.3 and in 40 C.F.R. § 761.61(a)(3)(i)(E). Both the owner of the Aspire property and the party conducting the cleanup must sign the Certification.

2. Pre-demolition survey. As discussed with Aspire on October 27, 2009, Aspire shall conduct a survey and sampling of building materials in structures currently at the site to determine if PCBs are present. We understand that structures at the site were built in 1946. Considering the production period of PCB-containing materials, it is likely that building materials in structures at the site may contain PCBs. Also see Condition 3 below. In addition, the compressor, underground pipelines, and transformer present at the site shall be tested for PCBs.

3. Sampling and analysis plan. This sampling plan is to address pre-demolition and pre-cleanup sampling activities as well as post-demolition sampling and PCB cleanup verification sampling. Within two (2) days after the date of this approval, Aspire must submit for USEPA approval a sampling and analysis plan (SAP) describing data quality objectives, sampling procedures, quality assurance / quality

control procedures for sample collection, number of samples to be collected, sample preservation, and chain-of-custody for sample delivery to the analytical laboratory. The SAP must identify the analytical laboratory performing analysis of the samples. In addition, the SAP must include decontamination procedures for movable equipment, tools, and sampling equipment in accordance with 40 C.F.R. § 761.79(c)(2). Aspire must obtain USEPA's written approval of the SAP before beginning sampling activities.

The SAP must include the procedures that Aspire will use to characterize building materials for PCBs in structures currently present at the site and planned for demolition before beginning school construction. Aspire shall follow the requirements in 40 C.F.R. Part 761, Subpart R ("Sampling Non-liquid, Non-Metal PCB Bulk Product Waste for Purposes of Characterization for PCB Disposal in Accordance with 40 C.F.R. § 761.62, and Sampling PCB Remediation Waste Destined for Off-Site Disposal, in Accordance with 40 C.F.R. § 761.61") for sampling of building materials to determine their PCB concentration for disposal.

4. Sequence of pre-cleanup PCB soil characterization; pre-demolition sampling (building materials); soil remediation; and soil cleanup verification. We understand that except for certain areas in the northwestern portion of the site, most of the site is paved. Current paving materials will be removed and all above ground structures demolished. The site will be completely bare prior to construction of the school. Within five (5) days after the date of this approval, Aspire shall propose the sequence that Aspire will follow for pre-cleanup PCB soil characterization, pre-demolition sampling, soil remediation, and soil cleanup verification to prevent recontamination of soils with PCBs if building materials in existing structures and underground structures (e.g., piping) contain PCBs.

5. PCB remediation waste; PCB bulk product waste; cleanup wastes; and disposal requirements. PCB remediation wastes and PCB bulk product wastes may be generated at the Aspire site during the PCB cleanup and demolition of structures (e.g., corrugated metal buildings) at the site. As the generator of such waste, Aspire must meet all applicable regulatory requirements for storage and offsite disposal in 40 C.F.R. § 761.61(a)(5) (Site Cleanup) and 761.62 (Disposal of PCB Bulk Product Waste). It is also acceptable to dispose of PCB remediation waste in accordance with 40 C.F.R. §§ 761.60 and 761.70. PCBs are a hazardous waste in California. Aspire must ensure that off-site disposal of PCB wastes also meet all applicable and relevant state and local regulatory requirements. Within five (5) days after the date of this approval, provide to USEPA the EPA identification number which confirms that Aspire has an USEPA identification number to manage the PCB wastes.

- *Bulk PCB remediation wastes (e.g., PCB-contaminated soil, PCB-contaminated concrete).* Disposal requirements for bulk PCB remediation waste with PCB concentration less than 50 ppm and equal to or above 50 ppm are contained in 40 C.F.R. §§ 761.61(a)(5)(i)(B)(2)(ii) and 761.61(a)(5)(i)(B)(2)(iii), respectively. Further, the generator must provide written notice to the disposal site of the wastes being shipped for disposal in accordance with 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iv).

- *Non-porous (e.g., metal) surfaces.* Non-porous surfaces contaminated with PCBs due to spills of liquid PCBs or the migration of PCBs from a manufactured product applied to these surfaces are bulk PCB remediation wastes. Dispose of these wastes offsite in accordance with 40 C.F.R. § 761.61(a)(5)(ii)(B).

- *Porous (e.g., concrete, metal coated with a porous surface) surfaces.* Porous surfaces contaminated with PCBs due to spills of liquid PCBs or the migration of PCBs from a product applied to these surfaces are bulk PCB remediation wastes. Dispose of these wastes offsite in accordance with 40 C.F.R. § 761.61(a)(5)(i).

- *Liquids (e.g., water).* Water contaminated with PCBs at the site (e.g., water generated during excavation of soils due to shallow ground water conditions) must be disposed offsite in accordance with 40 C.F.R. § 761.61(a)(5)(iv) if the PCB concentration in the water is above the applicable standard in 40 C.F.R. § 761.79(b)(1).

- *PCB bulk product waste.* This waste is defined in 40 C.F.R. § 761.3 and disposal requirements are in 40 C.F.R. § 761.62. This waste category includes materials manufactured with PCBs where the PCB concentration in these materials at the time of designation for disposal is ≥50 ppm.

- *Cleanup wastes (e.g., non-liquid cleanup materials, personal protective equipment).* Dispose of these wastes in accordance with 40 C.F.R. § 761.61(a)(5)(v).

6. Measures to prevent exposure of neighboring community to airborne particulates. In the "Air Monitoring" section of the Notification, Aspire proposes to conduct real-time airborne monitoring for particulates during activities likely to generate dust such as excavation of contaminated soils. This monitoring is proposed in the context of worker health and safety. However, such monitoring shall be expanded to include airborne particulate monitoring to determine if the neighboring community is being exposed to air particulates from the site during dust generating activities including building demolition. Within five (5) days after the date of this approval, submit for review the measures that Aspire will implement (including air monitoring) to prevent exposure of neighboring communities to airborne particulates.

In addition, Aspire shall notify neighboring communities of the soil excavation and building demolition activities to be conducted at the site before beginning such activities.

7. Cleanup levels. Aspire plans on redeveloping the site into a public school, which is a high occupancy area. In 40 C.F.R. § 761.61(a)(4)(vi), USEPA requires a PCB cleanup level for high occupancy areas of ≤1 mg / kg (ppm) PCBs. In accordance with 40 C.F.R. § 761.61(a)(4)(vi), USEPA has the authority to specify cleanup levels that are more stringent than ≤1 ppm PCBs. USEPA is approving a cleanup level of 0.13 mg / kg (ppm) for PCBs in soils. The DTSC School Program and Alameda County Environmental Health (ACEH) had approved this PCB cleanup level for the Aspire

school site that is the subject of this conditional approval. Refer to the ACEH March 12, 2009 letter to Aspire, which is attached to the cover letter. It is also our understanding that DTSC considers cumulative health risks when addressing school sites with multiple contaminants. The Aspire site has multiple contaminants in soils and ground water.

8. Cap (protective barrier). USEPA requires that a cap be installed at the Aspire proposed school site in accordance with the requirements in 40 C.F.R. § 761.61(a)(7). Please note that Aspire has acquired a property to construct the proposed school that has a long history (1946 – 2008) of industrial activity during which PCB releases occurred at the site. A possibility exists for PCB congeners (i.e., weathered PCB Aroclors that are dioxin-like PCB compounds) to be present at the site due to historic PCB releases. A cap will prevent direct exposure to soils containing these compounds.

In addition, USEPA was not involved with any of the investigations so far conducted at the site prior to Aspire's October 23, 2009 Notification to USEPA. PCB contaminated soils may remain at the site due to potential uncertainties in the characterization and remediation of PCB-contaminated soils at the site; and shallow ground water conditions potentially impacting site characterization and remediation. A potential may also exist for future changes at the school grounds where penetration of barriers (e.g., concrete, asphalt surfaces) preventing exposure to onsite soils may be necessary (e.g., repair of utilities).

9. Risk management plan and deed notice. The regulations in 40 C.F.R. § 761.61(a)(4)(i)(A) do not require further restrictions such as a deed notice when the ≤1 ppm PCB cleanup level for high occupancy is verified as achieved via confirmatory sampling. However, USEPA believes that in addition to Conditions 7 and 8 a risk management plan would be an institutional control protective of children at the future Aspire school.

USEPA is approving the 0.13 ppm PCB soil cleanup level for the Aspire site under the condition that (1) site soils are overlain with asphalt, concrete, and / or other cap (protective barrier) that impedes direct exposure to on-site soils and (2) a deed notice that includes a risk management plan be recorded in accordance with California state law.

Within 30 days after completion of the PCB cleanup, Aspire shall submit for USEPA approval a risk management plan that at a minimum includes:

- A survey of the Aspire property and map clearly depicting all areas where PCBs were encountered and remediated,
- A description of specific activities to be prohibited at the school because of their potential to penetrate protective barriers (e.g., asphalt, concrete) that would expose onsite soils,
- A description of how the teachers, administrators, and staff at the school will be notified of the specific activities which are prohibited at the school because of their potential to penetrate protective barriers (e.g., asphalt, concrete) that would expose onsite soils and
- The conditions under which penetration or alteration of protective barriers is permitted and the contingencies that must be implemented to prevent exposure to onsite soils.

Within 60 days after completing the PCB cleanup at the Aspire site, pursuant to 40 C.F.R. § 761.61(a)(8), Aspire shall record in accordance with California state law, a notation on the deed to the property, or on some other instrument which is normally examined during a title search, that will in perpetuity notify any potential purchaser of the property (1) That the land has been used for PCB remediation waste disposal and specific activities are prohibited as described in the risk management plan described above; (2) Of the existence of the cap (protective barriers) and the requirement to maintain the protective barriers in perpetuity; and (3) The applicable cleanup levels left at the site, under the cap; and (4) the procedure by which USEPA will be notified of penetrations or alterations of the required cap. In addition, Aspire must submit to USEPA a certification signed by the owner certifying the required deed was recorded.

10. Recordkeeping and PCB cleanup report. The owner of the property must keep records of the PCB cleanup including any cleanup conducted prior to the date of this approval that involved the removal of PCBs from the site. All reports currently available that document PCB cleanup at the site are incorporated herein as part of the Aspire October 23, 2009 Notification. In accordance with 40 C.F.R. § 761.61(a)(9), the owner of the property must keep cleanup records as required in 40 C.F.R. § 761.125(c)(5).

Submit for approval a PCB cleanup report within 30 days after completing the PCB cleanup (including removal and disposal of PCB remediation and bulk product waste). The report must contain all supporting sample analysis results documenting achievement of the PCB cleanup level, data summaries, waste disposal, and all the information required in 40 C.F.R. § 761.125(c)(5).

11. Restoration of the site. After achieving the PCB cleanup level, site restoration shall be done consistent with local and California State regulatory requirements as well as in accordance with the requirements in ACEH's March 12, 2009 letter approving the LFR CAP. The PCB soil cleanup level for the Aspire site is 0.13 ppm. The PCB concentration in the backfill material should not exceed this PCB soil cleanup level.